163 U S 319

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EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 928.

JAMES HUNTINGTON, PETITIONER FOR REVISION, APPELLANT,

vs.

WILLIAM A. SAUNDERS, BANKRUPT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

RECORD FILED MARCH 12, 1896.

(16,218.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 30, 1896.

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

JAMES HUNTINGTON, Petitioner for Revision, Appellant,
v.
WILLIAM A. SAUNDERS, Bankrupt, Appellee. } No. 142.

Appeal from the circuit court of the United States for the district of Massachusetts, from final decree (Putnam, J.), January 16, 1895.

Transcript of Record of Circuit Court.

(Filed August 2, 1895.)

Circuit Court of the United States, District of Massachusetts. In Bankruptcy.

In the Matter of WILLIAM A. SAUNDERS, Bankrupt. No. 4602.

Petition for Revision.

To the judges of the circuit of the United States for the said district:

1. Respectfully represents James Huntington of Cambridge in said district a creditor, having proved his claim in said bankruptcy, that on October 1, 1875, said Saunders was adjudged bankrupt by the district court for said district on a petition of creditors filed July 13, 1875; and in due course of proceedings thereon, unsecured debts to the amount of three hundred and twenty thousand dollars were proved against his estate and Francis J. Parker of Newton, Richard J. Monks of Boston in said district, and this petitioner were duly appointed assignees and accepted that trust.

2. Before his failure in April, 1875, the bankrupt had been for many years doing a large business, and had in his possession a very large estate and after he failed and retired to his house, creditors were quieted by the assurance that their claims would be paid, so that some months elapsed before bankruptcy proceedings ensued and the investigations of the assignees could be commenced, and this time was used by the bankrupt with the assistance of numerous agents and attorneys in concealing the estate and disposing of the same to the prejudice of the creditors, but no payments were made to them, and the bankrupt disclosed a very small quantity of property to the assignees of less than five thousand dollars in amount, and the assignees afterwards recovered about twenty-five thousand dollars, and the amount of all dividends to creditors was less than seven per cent. on the debts proved. Peti-oner believes that a much larger amount of assets was concealed from the assignees, and not recovered for want of better information.

3. From the time of his failure in April, 1875, the bankrupt remained for more than fifteen years in and about his house, giving

no information or assistance to the assignees regarding the discovery and adjustment of his property and affairs, and was pretending continual sickness, while the shifting of funds and real estate and securities was carried on for more effectual concealment,—and when on petition of the assignees filed March 1, 1876, he was required to appear for examination before the register having charge of the case, he did not appear at the time fixed therefor, or offer to appear at any other time, and no reason for his absence was shown,—and when the assignees again applied for such examination in November, 1880, he sent a physician's certificate to show that he was not then in condition to appear, but did not offer to appear at any other time, and has never been examined or given any information whatever about his estate, and has not shown his books or papers used in his business.

4. In September, 1876, Mary P. Saunders, the wife of said bankrupt, was duly ordered and summoned to appear before said register, for examination in regard to the estate in bankruptcy, but did not appear, and on the return of a second summons by the marshal, she did not so appear, and though it appears by the record that she was sworn for examination on February 7, 1877, she did not appear for examination as required, and the bankrupt did not at any time show that he was unable to procure her attendance.

5. The bankrupt applied for a discharge by a petition, filed July 19, 1876, and notice thereon was given, returnable May 25, 1877, and this petitioner objected to the granting of a discharge, and on June 4, 1877, filed in court, written specifications of his objections, to which no exception was taken for either form or substance, and the same were duly referred to said register, and at several hearings thereof before the register, the bankrupt being there represented by counsel, much testimony and documentary evidence was offered by this petitioner and admitted in support of said specifications, but no counter-evidence was offered by the bankrupt, and the matter was argued by counsel, and the hearing was duly closed in the year 1878, but no report has been made thereon by the register to the court.

6. The said specifications of objection to the discharge, filed as aforesaid, a copy whereof is hereto annexed, were true in fact, and most of them were fully proved, and from the filing thereof the bankrupt regarded his petition for discharge as hopeless, and thereafter by counsel consented to several judgments in favor of this petitioner in the State courts of Massachusetts, and otherwise abandoned his petition for discharge, and the delay of said register in filing his report on the objections thereto, was caused not by anything done or omitted by this petitioner, but by reason of the consent and according to the request of the bankrupt.

7. On December 19, 1893, the bankrupt made an application to the court of bankruptcy, praying that the said specifications of objection be dismissed or that the same be set down for trial at an early day, and on December 23, 1893, this application was brought to the attention of that court in the presence of counsel for both parties, and the court summarily, without hearing any evidence or

consulting the register, ordered that the specifications be dismissed for want of prosecution, leaving the petition for discharge pending. And thereupon this petitioner filed an application to the court of bankruptcy, praying that the petition for discharge, being the other part of the same proceeding be also dismissed, but when this application was on December 30, 1893, in presence of counsel for both parties, brought to the attention of the court, it was refused and summarily ordered to be dismissed without hearing any evidence,—and without appointing any time for trial or hearing of the matter, the discharge of the bankrupt was forthwith ordered to be granted by the court, notwithstanding the certificate of the register made on said December 30, 1893, a copy whereof is hereto annexed, and notwithstanding the several objections to such discharge set forth in this petition.

Wherefore your petitioner, feeling aggrieved by the above-mentioned orders or decrees of said district court, which he believes to be erroneous, prays that the same may be revised and reversed by this court.

JAMES HUNTINGTON,
By GEO. W. PARKE,
His Attorney.

GEO. W. PARKE,
Of Counsel for Petitioner.

Filed January 3, 1894.

Specifications of James Huntington.

I, James Huntington, of Cambridge, in the county of Middlesex, and State of Massachusetts, a creditor having proved my claim against the estate of William A. Saunders, the bankrupt, and having received notice of his petition for a discharge from his debts, do hereby oppose the granting of such discharge and for the grounds of such opposition, do file the following specifications:

1. That the bankrupt has concealed and has not on demand delivered to his assignees his books of account, deeds, receipts and other papers, particularly one ledger book containing accounts of his business prior to, and during the year 1874, and one large pocket memorandum book, in which for one or two years prior to the first day of April, 1875, he made notes and entries relating to his business.

2. That on or about the first day of March, 1875, the bankrupt, being insolvent, transferred to his wife, Mary P. Saunders, seven shares of stock in the Cambridge Gaslight Company, without consideration, and in fraud of his creditors and has concealed the same from his assignees.

3. That on or about the fifth day of May, 1875, the bankrupt, being insolvent, transferred to his son William E. Saunders, ten shares of stock in the Cambridge Gaslight Company, without consideration, and in fraud of his creditors, and has concealed the same from his assignees.

4. That on or about the eighth day of May, 1875, the bankrupt, being insolvent, mortgaged lands in Cambridge in said district to the Boston Five Cents savings bank, and borrowed thereby the sum of eight thousand dollars in cash and forthwith transferred the same to his son, William E. Saunders, without consideration, and in fraud of his creditors, for the purpose of concealing the same from his creditors and assignees.

5. That on or about the seventeenth day of May, 1875, the bankrupt being insolvent made a conveyance of several large tracts of land, situated on, or near Oxford street, in said Cambridge, called the Frost Estate land, to his son William E. Saunders, without consideration, for the purpose of concealing the same and the title thereof from his creditors and assignees.

6. That on or about the first day of April, 1874, the bankrupt took in exchange for other property a large and valuable diamond, worth from $1,000 to $1,500, and has secreted the same by a pretended transfer thereof to his wife, and has concealed the same from his assignees, in fraud of his creditors.

7. That the bankrupt in the month of October, 1874, being insolvent, conveyed one undivided half of a large and valuable wharf property, situated on Charles river, in said Cambridge, and known as Winthrop wharf, to his son, William E. Saunders, without consideration, and in fraud of his creditors and of his assignees in bankruptcy.

8. That prior to, and on the first day of April, 1875, the bankrupt had in his office on Washington street, in Boston, in said district, a valuable iron safe, which with its contents was removed by him from said office, and concealed, and neither said safe or its contents have on demand been delivered to his assignees, or accounted for.

9. That a short time before he suspended payment, the bankrupt transferred large and valuable tracts of land situated in Cambridge and Boston, to the trustees of the Cambridge Land Trust, so called, and took therefor certificates showing an equitable interest in the lands held by such trustees, and transferable by assignment, and such certificates have not on demand been delivered to his assignees, or accounted for.

10. That the bankrupt a short time before he suspended payment, purchased a large music box, which has not on demand been delivered to the assignees and is concealed from them.

11. That the bankrupt, in the year 1873, being insolvent, transferred ten shares of the capital stock of the Piscataquis Iron Company to his son, William E. Saunders, without consideration, and in fraud of his creditors and assignees.

12. That the bankrupt being the owner of a large and valuable homestead estate, situated on North avenue, in Cambridge, in which he now resides, in the year 1867, caused deeds to be made and recorded purporting to convey said estate from him to Andrew E. Johonnot, and from said Johonnot to Mary P. Saunders, wife of the bankrupt, to evade debts that he then owed and still owes, and other debts that he intended to contract and did contract, whereas said deeds were sham and pretended, the title remaining always in

the bankrupt,—and after he was adjudged bankrupt, for the purpose of getting said property actually conveyed to his wife, he, by his agents pretended that the title had actually been in her after the date of the deeds made as aforesaid in the year 1867, and that he then owed no debts to prevent him from making a voluntary conveyance, thereby deceiving his creditors, assignees and the court, and procuring an order that for a very inadequate consideration, this with other property that he had failed successfully to conceal should be released to his son, William E. Saunders, so that the latter could convey the same to Mary P. Saunders, and by such ingenious device and fraud his creditors have been deprived of nearly the whole value of said estate which in law and justice was a part of the assets in bankruptcy.

13. That the bankrupt has wilfully sworn falsely in the affidavit annexed to his schedules, in that he knowingly omitted therefrom the property mentioned in the foregoing specifications, and also an interest in 160 acres of land in Howard county, Iowa, and in that he omitted therefrom the names of Sarah A. Saunders and Abigail Prentiss, to whom he was indebted in considerable sums at the time.

14. That on or just prior to the first day of April, 1875, the bankrupt borrowed and received from John Worcester one thousand dollars in cash, of Frederick T. Stevens one thousand dollars in cash, of Henry R. Glover fifteen hundred dollars in cash, and of Aaron H. Safford seven hundred dollars in cash, amounting in the whole to four thousand two hundred dollars, all which moneys and the accounts relating to the same have been concealed from the assignees.

15. That the bankrupt has neglected and refused to obey an order of the court made on the first day of March, 1876, in not attending and submitting himself for examination by the assignees touching his property and estate.

16. That upon the advice and with the concurrence of an assistant district attorney of the United States, within and for said district, a criminal prosecution was commenced in the year 1876, before H. L. Hallett, Esq., a commissioner of the circuit court wherein the bankrupt was charged with misdemeanors under the acts of Congress relating to bankruptcy, which prosecution against the bankrupt was suspended by reason of the ill health of the bankrupt to be renewed whenever his condition of health shall admit of his examination and arraignment, and no trial of such charges has yet been obtained.

17. That the bankrupt has concealed and wilfully omitted from his schedules a valid claim due to him and his estate, from Richard Penney of said Cambridge, and as to this has sworn falsely in the affidavit annexed to his schedules.

18. That he, a short time before bankruptcy, and while insolvent has transferred to his son William E. Saunders, several shares in the capital stock of the Cambridge Lyceum, without consideration and in fraud of his creditors, thus concealing the same from the

assignees and has willfully omitted the same from his schedules in bankruptcy, to which the aforesaid affidavit is annexed.

(Signed) JAMES HUNTINGTON.

Certificate of S. Lothrop Thorndike.

At Boston, in said district, on the thirtieth day of December, 1893, I, S. Lothrop Thorndike, register in bankruptcy, hereby certify that said bankrupt has in all things conformed to his duty under the acts of Congress relating to bankruptcy, and appears to be entitled under the provisions thereof to receive a discharge.

Excepting, however, that my record does not show that the bankrupt submitted to examination, but does show that on November 13, 1880, a physician's certificate was shown that he was not in condition to be examined.

Excepting, also, that the record shows that the bankrupt's wife though summoned, did not appear for examination, and it does not show that the bankrupt was unable to procure her attendance;

Excepting, also, that the question is referred to the judge, whether certain evidence in the case, tending to show grounds for withholding a discharge, is still open for consideration, although the objections under which that evidence was taken have been dismissed for want of prosecution.

S. LOTHROP THORNDIKE,
Register in Bankruptcy.

Answer of Bankrupt to Petition for Revision.

1. The bankrupt admits the allegations of paragraph one (1) of said petition.

2. The bankrupt denies the allegations of paragraph two (2), three (3), four (4), five (5), six (6), seven (7), of said petition, except as follows, that is to say, he admits that he applied for a discharge as set forth in paragraph No. five (5) of said petition, that notice thereon was given returnable at the time therein stated, and that specifications of objection were filed as therein stated. He also admits that on December 19, 1893, he made application to the district court in bankruptcy, praying that said specifications might be dismissed, and that the same were dismissed on notice and hearing by said district court, and that on December 30, 1893, the discharge of the bankrupt was granted by said court; but this respondent says, that said petition for discharge was granted after due hearing by said district court, at which evidence was heard by said court, and said bankrupt and his wife were duly sworn and testified.

And this respondent further says, that all the proceedings of said district court in relation to the discharge of said bankrupt were in due form of law, and in conformity with the acts of Congress relating to bankruptcy, and that the petitioner in his said petition has shown no cause why the same should be revised or reversed by this court.

By his attorney, WM. B. DURANT.

JAMES HUNTINGTON, Petitioner,
vs.
WILLIAM A. SAUNDERS, Respondent.

And now the petitioner replies to the answer of the respondent, and says his petition is true, certain and sufficient, and that said answer is untrue, uncertain and insufficient, and therefore petitioner joins issue on said answer.

By his attorney, GEO. W. PARKE.

("C," W. E. Spear, U. S. Com'r.)

Docket Entries.

JAMES HUNTINGTON *et als.*
vs.
WILLIAM A. SAUNDERS, of Cambridge. } No. 4602.

Hutchins & Wheeler. Park & Piper.

1875, July 13. Petition filed in court, $50.
" 16. Order of notice to show cause returnable July 23d.
" 23. Denial of bankruptcy and demand for trial by jury.
Oct. 1. Amendment to creditor's petition filed by consent.
" 1. Agreement that questions relating to the respondent's discharge shall be heard and determined by the court.
" 1. Defendant defaulted by consent.
" 1. Adjudication of bankruptcy made.
" 1. Warrant for first meeting returnable October 16, 1875.
" 1. Order of reference to S. L. Thorndike, register.
" 6. Schedule of claims filed.
1875, Nov. 2. $50 deposit paid Register Thorndike.
" 5. Petition of James Huntington for expunging part of Whitman's claim.
" 12. Resolution nominating as trustees Richard J. Monks and Francis J. Parker.
" 12. Memoranda of first meeting October 16 adjourned to October 18.
" 12. Mem. of adj'd 1st meeting Oct. 18, adj'd to Oct. 22.
" 12. " " " " " 22, " " 23.
" 12. " " " " " 23, " " 27.
" 12. " " " " " 27, " " 28.
" 12. " " " " " 28, " " 29.
" 12. " " " " " 29, " " 30.
" 12. " " " " " 30, " Nov. 4.
" 12. " " " " Nov. 4, "
" 12. " " " " and of resolution to settle estate by trustees.
" 12. Memoranda of first meeting adjourned.
" 12. List of debts proved November 4.
" 15. Objection to resolution for trustees and committee.

Nov. 15. Objections to resolution for trustees and committee referred to register, and hear parties and report his findings, &c.
Dec. 8. Report of register on objections referred to him Nov. 15.
" 8. Memoranda of first meeting December 7.
" 8. Messrs. Francis J. Parker and Richard J. Monks, both of Boston, appointed assignees, and James Huntington of Cambridge.
" 15. Assignment filed.
1876, M'ch 1. Petition of assignee for leave to examine bankrupt.
" 1. Order for examination of bankrupt returnable March 14.
" 24. Memoranda of order for second meeting returnable April 5.
Apr. 1. Petition of William B. Stevens, a creditor, for leave to sell collateral
" 7. List of claims proved at second meeting.
" 11. Memorandum of second meeting April 5.
" 11. Decree on petition of William B. Stevens for leave to sell collateral.
June 26. List of debts proved at third meeting.
July 19. Petition of bankrupt for discharge.
" 25. Memorandum of order for examination of bankrupt May 5, at 10 a. m.
" 25. Memorandum of third meeting returnable June 21, at 12 m.
" 25. Memorandum of attending third meeting adjourned to July 5, at 12 m.
" 25. Memorandum of attending adjourned third meeting adjourned to July 26, at 12 m.
" 28. List of debts proved at adjourned third meeting July 26.
Aug. 5. Memorandum of second adjourned meeting July 26.
Sept. 20. Register's fee bill audited, $231.30 allowed.
1876, Sept. 26. Petition of creditors for leave to bring action in the name of assignees.
" 30. Order referring to register's petition for leave to bring action in the name of assignees.
Oct. 12. Statement of James Huntington.
" 12. Petitions of Francis J. Parker, *et al.*, assignees to sell property at private sale.
" 12. Petition in aid of petition of James Huntington, *et al.*, to bring action.
" 12. Register's report on petition of Parker & Monks, assignees, and of Huntington, assignee.
" 20. Petition of Faneuil Hall Insurance Company for leave to sell collateral, &c.
" 20. Order to show cause on petition of Faneuil Hall Insurance Company filed this day, to assignees returnable October 25.

Oct. 25. Order granting petition to Faneuil Hall Insurance Company for leave to sell filed October 20, and that assignees be duly notified of time and place of sale.
" 30. Report of register on petition of Parker, *et al.*, and of Huntington approved and confirmed.
" 30. Order that petition of Parker & Monks, filed October 12 for leave to sell, be granted.
" 30. Order that petition of J. Huntington, *et al.*, filed October 12, for leave to bring action be denied.
1877, Jan'y 23. List of debts proved January 17.
" 30. Petition of Samuel B. Rindge for sale of collateral.
" 30. Order on petition of Samuel B. Rindge filed this day.
Feb. 2. Memorandum of fourth meeting January 17.
M'ch 8. Memorandum of Mary P. Saunders sworn for examination February 6.
" 8. Memorandum of petition of Parker & Monks, assignees, for leave to sell furniture, &c., and order for it returnable March 3.
" 8. Memorandum of adjourned fourth meeting February 27, assignees declared dividend of 5 per cent.
" 8. List of debts proved at adjourned fourth meeting.
Apr. 20. Memorandum of order granting petition.
" 20. Memorandum of second adjourned fourth meeting March 27, adjourned to April 17.
" 20. Memorandum of third adjourned fourth meeting April 17.
" 20. List of claims proved April 17.
" 30. Petition of bankrupt for discharge.
" 30. Order for discharge hearing trt. May 25.
May 4. Memorandum of fifth adjourned fourth meeting April 25.
" 11. Clerk's fee bill, $35.30, paid October 11, 1877.
" 14. James Huntington objects to discharge of bankrupt.
" 25. Return of advertisement of discharge hearing.
" 25. S. H. Dudley objects to discharge of bankrupt.
" 25. Memda. as to examination of bankrupt.
1877, June 4. Specifications of objections to bankrupt's discharge by James Huntington.
" 4. Petition of S. H. Dudley to be allowed to join in objections specified by Huntington.
" 11. Register's fee bill audited, $196, allowed.
Dec. 4. Petition of S. H. Dudley, a creditor, for leave to take judgment, filed.
" 8. Petition of S. H. Dudley denied by court.
1878, Feb. 23. Ordered that creditor objecting to discharge of bankrupt take reference to register on or before March 4th, and that then shall proceed with hearing immediately thereafter.

Feb. 25. Objections to discharge referred to Register Thorndike.
Notice to debtor and attorney of order of August 7.
1880, Oct. 19. Withdrawal of objections to discharge of debtor by S. H. Dudley.
Dec. 22. Assignee requested to report if he has further occasion to keep the case open.
1881, Jan. 31. Petition of James Huntington and assignees for examination of witnesses.
Feb. 5. Petition of James Huntington and the assignees filed January 31, dismissed.
" 11. James Huntington, one of the assignees, gives notice of appeal to circuit court for revision of order of February 5th dismission; petition for examination of witnesses filed January 31, 1881.
May 21. Assignee notified of general order of April 5.
June 2. Assignee wishes case kept open.
1883, June 5. Petition by debtor that S. H. Dudley be restrained from taking out judgment in State court.
1893, Oct. 14. Petition of S. H. Dudley to vacate order restraining him from taking judgment.
Dec. 22. Petition of bankrupt that objections to his discharge may be dismissed or heard at an early day.
" 23. Objections to bankrupt's discharge by James Huntington dismissed for want of prosecution.
" 27. Petition of James Huntington that bankrupt's petition for discharge be refused.
" 30. Petition to dismiss bankrupt's petition for discharge denied by the court.
" 30. Bankrupt's final oath.
" 30. Register's certificate of bankrupt's conformity.
" 30. Clerk's fees, final $5, paid.
" 30. Bankrupt's discharge granted.
1894, Jan. 1. Notice of application by James Huntington to circuit court for review of dismissal of objections and granting bankrupt's discharge.

I hereby certify that the foregoing is a true copy of all the docket entries in the case of William A. Saunders in bankruptcy No. 4602, in the United States circuit court for the district of Massachusetts.

Witness my hand and the seal of said court this twelfth day of May, A. D. 1894.

F. S. FISKE,
Deputy Clerk of said Court.

Transcript of Record.

UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

At the circuit court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-four.

Before the Honorable Le Baron B. Colt, circuit judge.

JAMES HUNTINGTON, Petitioner for Revision, v. WILLIAM A. SAUNDERS, Bankrupt. } 444, Equity Docket. In Bankruptcy.

The petition for revision in this cause was filed in the clerk's office on the third day of January, A. D. 1894, and was duly entered at the October term of this court, A. D. 1893, and is in the words and figures following:

Petition for Revision.

(Filed Jan. 3, 1894.)

(MEMORANDUM.—The petition for revision, as printed in this Transcript of Record, commencing on page 1, is here inserted.—Alex. H. Trowbridge, clerk.)

At the same term the following answer was filed:

Answer.

(Filed Jan. —, 1894.)

(MEMORANDUM.—The answer, as printed in this Transcript of Record, on page 6, is here inserted.—Alex. H. Trowbridge, clerk.)

Also at the same term the following replication was filed:

Replication.

(Filed Feb. 16, 1894.)

(MEMORANDUM.—The replication, as printed in this Transcript of Record, on page 6, is here inserted.—Alex. H. Trowbridge, clerk.)

This cause was thence continued from term to term to the present October term, A. D. 1894, when, publication of the testimony having passed in the clerk's office, the same is set down for hearing and fully heard by the court, the Honorable William L. Putnam, circuit judge, sitting.

On the twentieth day of November, A. D. 1894, the opinion of the court is announced, and on the sixteenth day of January, A. D. 1895, the following order of court is entered, pursuant to said opinion, dismissing the petition with costs:

Order of Court.

January 16, 1895.

PUTNAM, *J.*:

Ordered, in accordance with the order of Nov. 20, 1894, that the petition for revision of the proceedings of district court shall be, and the same is hereby, dismissed with costs.

By the court:

ALEX. H. TROWBRIDGE, *Clerk.*

A true record.

ALEX. H. TROWBRIDGE, *Clerk.*

On the eleventh day of July, A. D. 1895, the following claim of appeal is filed.

Claim of Appeal.

(Filed July 11, 1895.)

And now comes James Huntington, the petitioner in the above-entitled action, and claims an appeal from the finding of this court affirming the decree of the district court for the district of Massachusetts, which admitted said William A. Saunders, the respondent, to a discharge from bankruptcy. And petitioner prays that his claim may be allowed, deposit having been made in lieu of bond on appeal.

Respectfully submitted.

JAMES HUNTINGTON,
By his attorney, GEO. W. PARKE.

July 26, 1895.

Appeal allowed.

W. L. PUTNAM,
Circuit Judge.

Assignment of Errors.

(Filed July 15, 1895.)

The said petitioner respectfully represents that the court erred in dismissing said petition for the reasons assigned as follows, viz:

1. Because the debtor has not done all acts required by the court, touching the assigned property, and to enable the assignee to recover and receive all said property.

2. Because the bankrupt has concealed part of his estate, and books and writings relating thereto, and has been guilty of fraud and negligence in the care, custody and delivery to the assignees of the property belonging to him at the time of the representation of his petition and inventory, and which he was not permitted by law to retain, and has permitted loss and waste thereof.

3. Because it appears from the record that the bankrupt made

fraudulent gift, transfer, conveyance and assignment of parts of his property contrary to law.

4. Because the bankrupt, in contemplation of becoming bankrupt, made transfer, assignment and conveyance of parts of his property for the purpose of preventing said property from coming into the hands of his assignees, and of being distributed in satisfaction of his debts.

5. Because the debtor's assets were not equal to fifty per centum of the claims proved against his estate upon which he was liable as the principal debtor, and which were contracted subsequently to Jan. 1, A. D. 1869, and the assent in writing to his discharge of a majority in number and value of his creditors to whom he was liable as principal debtor upon debts contracted as aforesaid, and who proved their claims, was not filed at or before the time of hearing his application for discharge.

6. Because the debtor has not duly and lawfully taken and subscribed the oath specified by law as a prerequisite to his discharge; and no sufficient oath or conformity has ever been taken by the debtor.

7. Because it appears from the record that the bankrupt had not in all things conformed to his duty under title LXI of the Revised Statutes of the United States, but has failed to so conform in the respects herein specified; and the court erred in finding that he was entitled under the provisions thereof to receive a discharge.

8. Because no such want of prosecution of the objections to the bankrupt's discharge existed as to justify the decree of Dec. 23, 1893, dismissing said objections, since:

First. The assignee conformed, as far as lay in his power, with the order of Feb. 25, 1878, to "proceed immediately," and it does not appear that he was ever notified or knew that the bankrupt had recovered in health sufficiently to proceed with his examination.

Second. The delay in proceeding with the bankrupt's examination was chargeable solely to the bankrupt, and he alone is guilty of laches in that matter; and the assignee was entitled to assume on the facts shown that the bankrupt had abandoned his attempt to obtain a discharge.

Third. It clearly appears that there was "unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge."

Fourth. It does not appear that as soon as might be after the removal of the impediment alleged as a reason for non-compliance with the summons to attend the register, the debtor offered to attend and submit to the order of the court for his examination.

Fifth. After requesting the register to order the attendance and examination of the debtor, the assignee had done all that he could or should have done to conform to the order of the court to "proceed." He had taken all steps which the law provides in such case, and had no other means of procuring such report from the register to the court as the register is required by law to make; and the records show that counsel for the bankrupt had suggested, and in effect requested, the withholding of the register's report.

Sixth. By ordering the objections dismissed for want of prosecu-

tion, the district court deprived the petitioner of his right to oppose the discharge upon those grounds excepted in the register's certificate of partial conformity.

Respectfully submitted by

JAMES HUNTINGTON, *Petitioner.*

(MEMORANDUM.—The opinion of the circuit court comes here in the original transcript of record, but, it being already in print, I have placed it at the end of this Record as pages 85 to 88.—John G. Stetson, clerk.)

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to William A. Saunders, of Cambridge, in the district of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the thirteenth day of August next, pursuant to an appeal duly obtained from the circuit court of the United States for the district of Massachusetts, wherein James Huntington of said Cambridge is appellant, and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William L. Putnam, judge of the circuit court of the United States for the district of Massachusetts, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-five.

WILLIAM L. PUTNAM,
U. S. Circuit Judge.

Officer's Return.

UNITED STATES OF AMERICA, *District of Massachusetts,* } *ss:*

BOSTON, *July* 31, 1895.

I hereby certify that on the thirty-first day of July, 1895, I served the within citation by leaving a true and attested copy of said citation at the last and usual place of abode at Cambridge of the within-named William A. Saunders.

F. X. MACDONALD,
Deputy United States Marshal.

Fees.

Service	$2 00
Copy	1 00
Tr.	30
Total	$3 30

Clerk's Certificate.

UNITED STATES OF AMERICA, }
District of Massachusetts, } *ss:*

I, Alexander H. Trowbridge, clerk of the circuit court of the United States for the district of Massachusetts, within the first circuit, certify that the foregoing is a true copy of the record and all proceedings in the cause entitled, No. 444, in bankruptcy, James Huntington, petitioner for revision, *v.* William A. Saunders, bankrupt, in said circuit court determined, the opinion of the circuit court of Nov. 20, 1894, the claim of appeal, the assignment of errors, and also the original citation issued upon the appeal of the petitioner in said cause, with the officer's return of service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court at Boston, in said district, this first day of August, A. D. 1895.

[SEAL.] ALEX. H. THOWBRIDGE, *Clerk.*

Circuit Court of the United States, District of Massachusetts.

JAMES HUNTINGTON, Petitioner for Revision in Bankruptcy, *v.* WILLIAM A. SAUNDERS, Bankrupt. } No. 444.

Opinion of the Court.

November 20, 1894.

PUTNAM, *J.:*

It is conceded that the evidence available in the district court touching the merits of the objections to the bankrupt's discharge has not been laid before this court, nor has like evidence been taken here *de novo*. Only such portions have been produced as are supposed to throw light on the seventh paragraph of the revisory petition addressed to us, and on some other propositions, which we will refer to further on. The seventh paragraph is as follows:

"On December 19, 1893, the bankrupt made an application to the court of bankruptcy, praying that the said specifications of objection be dismissed or that the same be set down for trial at an early day, and on December 23, 1893, this application was brought to the attention of that court in the presence of counsel for both parties, and the court summarily, without hearing any evidence or consulting the register, ordered that the specifications be dismissed for want of prosecution, leaving the petition for discharge pending. And thereupon this petitioner filed an application to the court of bankruptcy, praying that the petition for discharge, being the other part of the same proceeding, be also dismissed, but when this application was, on December 30, 1893, in the presence of both parties, brought to the attention of the court, it was refused and summarily ordered to

be dismissed without hearing any evidence, and, without appointing any time for trial or hearing of the matter, the discharge of the bankrupt was forthwith ordered to be granted by the court, notwithstanding the certificate of the register made on December 30, 1893, a copy whereof is hereto annexed, and notwithstanding the several objections to such discharge set forth in this petition."

For aught that appears in this proposition, the conclusion granting a discharge may have been correct, though reached by an irregular course of proceedings. The allegations of this paragraph, so far as essential to this hearing, are disputed, and thus an issue of fact is raised, which is not, and cannot, be determined by an inspection of the records of the district court, and upon which the appellant has offered for our consideration the testimony of witnesses, asking us to resort to parol proof for its determination. Clearly the revisory power given by section 4986 of the Revised Statutes does not go to this extent. It does not give this court the power which may be exercised on an appeal in equity or a writ of error, of revising and correcting mere irregularities arising in the course of proceedings in the district court, nor any method of enforcing any orders or directions in that behalf. We have no power, under the section in question, except to "hear and determine the case" itself, either on the proofs in the district court, or, if allowable, on such additional new proofs as may be submitted to us. Nor is it permissible to split up the proceeding in the district court and offer it to us for revision piecemeal, as the appellant attempts to do. Our jurisdiction is limited to the result reached by the district court, or at the most to the determination of matters which appear by the record of that court to have been determined or done by it. In this case this power is limited to revision of the order granting a discharge, and, perhaps, of the order dismissing the specifications. The record presented does not enable us to determine whether on the whole case the appellant is entitled to have his specifications considered, or whether the bankrupt is or not entitled to a discharge; and therefore it offers nothing proper for our consideration.

But it is claimed that it appears of record that the bankrupt is not entitled to his discharge, because, first, there is no proper certificate of regularity from the register; second, because the bankrupt did not submit to an examination; and third, because he did not secure the examination of his wife, as provided by section 5088 of the Revised Statutes.

Only the second of these was covered by the creditor's specifications of the grounds of opposition to the discharge. But, waiving that fact, all three resolve themselves into, and are disposed of by, the general considerations which we have already stated. There is no rule of law which makes the register's certificate of regularity a prerequisite to a discharge. Although section 5114 of the Revised Statutes requires, as such prerequisite, that it shall appear to the court that the bankrupt has in all things complied with his duty under the statutes, yet to make a register's certificate essential would turn over the administration of justice to a subordinate official, who is not even a constitutional judicial officer. Even the

duty to require a last examination, apparently imposed by section 4998 of the Revised Statutes, does not arise without an order. United States *v.* Clark, 4 B. R., 59, 61. The court has the undoubted power to satisfy itself without a register's certificate, and even in the face of a hostile one. What the district court did in this particular is a part of its own mere course of proceedings, which does not appear of record, and over which we have no power. The expressions in Bellamy's case, 1 Ben., 426, 430, and in other cases of like character, instead of impugning this position, support it. It appears that in the southern district of the second circuit there were rules of the district court requiring a certificate of regularity, and these also made the return of all papers by the register a prerequisite to a discharge. It is absurd to suppose that a loss of papers by the register would perpetually bar the discharge of an innocent bankrupt; and as both prerequisites stand on the same basis, it is plain that they were required only to aid the court, and that, like other rules of like character, they must yield when, under special circumstances, they stand in the way of the law.

The appellant claims that the record shows that there were orders for the examination of the bankrupt and his wife, but does not show that they were examined, or that the bankrupt was unable to procure the attendance of his wife under section 5088 of the Revised Statutes, and that this raises a presumption, which cannot be met as the case stands, arising against the bankrupt under section 5114, already referred to. But there is no rule of law that all the facts touching these orders which might have been shown to the district court, should appear of record, and the presumption the appellant suggests, is contrary to all experience in the practical administration of justice. *Non constat* the district court did not know, or find, that neither the bankrupt nor his wife were duly notified to appear for examination, or that they were unable to appear through sickness or some other misfortune, or that they appeared and the party who applied for the examination did not appear.

It is to be borne in mind that, as this record comes to us, we are not considering what we might or should find on a full presentation of facts, but what the district court might in legal possibility have found. Therefore, all these propositions came back to the considerations which apply to the seventh paragraph of the petition for revision.

The petition is dismissed with costs.

United States Circuit Court of Appeals for the First Circuit.

JAMES HUNTINGTON, Petitioner for Revision, Appellant,
v.
WILLIAM A. SAUNDERS, Bankrupt, Appellee. } No. 142.

Motion to Dismiss Appeal.

(Filed September 27, 1895.)

And now the said William A. Saunders, appellee, comes into court and moves to dismiss the appeal in said cause because, as he

alleges, the court have no jurisdiction thereof, and said want of jurisdiction is apparent upon the face of the record.

By his attorney, WILLIAM B. DURANT.

A true copy.
Attest:
[SEAL.] JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

JAMES HUNTINGTON, Petitioner for Revision, Appellant,
v.
WILLIAM A. SAUNDERS, Bankrupt, Appellee. } No. 142.

Before Colt, Webb, and Carpenter, JJ.

Opinion of the Court.

February 3, 1896.

CARPENTER, *J.:*

This is an appeal from a decree of the circuit court for the district of Massachusetts dismissing a petition for review of the proceedings of the district court in a matter arising under the bankruptcy law of 1867. Rev. Stat., title LXI.

We are of opinion that this court has no jurisdiction of the appeal. The act by which this court is established gives general jurisdiction to review final decisions of the circuit courts "unless otherwise provided by law." 26 Stat., 828, chap. 517, sec. 6. In the act repealing the bankruptcy law it is provided that the law shall continue in force until all proceedings thereunder "shall be fully disposed of in the same manner as if said act had not been repealed." 20 Stat., 99, chap. 160. Under the provisions of the act thus continued in force there was no appeal from the decree of the circuit court under the supervisory power vested in that court. Wiswall *v.* Campbell, 93 U. S., 347. This case therefore falls within the exception in the clause giving jurisdiction to this court, and it follows that the appeal must be dismissed.

A true copy.
Attest:
[SEAL.] JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

JAMES HUNTINGTON, Appellant,
v.
WILLIAM A. SAUNDERS. } No. 142.

Before Colt, Webb, and Carpenter, JJ.

Final Decree.

February 3, 1896.

This cause came on to be heard at the present term of October, A. D. 1895, on the transcript of record of the circuit court of the United States for the district of Massachusetts, and the motion of the appellee to dismiss the appeal in this cause for want of jurisdiction, and was argued by counsel.

On consideration whereof it is now, to wit, February 3, 1896, here ordered, adjudged, and decreed that the appeal in this cause be, and the same is hereby, dismissed for want of jurisdiction in this court, with costs for William A. Saunders, appellee, incident to his motion to dismiss, and that he have execution against said James Huntington therefor.

By the court:

JOHN G. STETSON, *Clerk.*

A true copy.
Attest: JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

JAMES HUNTINGTON, Appellant,
v.
WILLIAM A. SAUNDERS. } No. 142.

Before Colt, Webb, and Carpenter, JJ.

Stipulation.

(Presented in court and filed February 15, 1896.)

It is agreed that the appellant, Huntington, is a creditor of the appellee, Saunders, and that the amount of his claim against the bankrupt, which will be discharged if the discharge granted to the bankrupt shall stand, amounts to over five thousand dollars ($5,000), exclusive of any interest or costs.

JAMES HUNTINGTON.
WM. B. DURANT,
For Appellee.

A true copy.
Attest: JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

JAMES HUNTINGTON, Appellant,
v.
WILLIAM A. SAUNDERS. } No. 142.

Claim of Appeal.

(Presented in court and filed February 15, 1896.)

And now comes James Huntington, the petitioner in the above-entitled action, and claims an appeal to the Supreme Court of the United States from the decree of this court declining jurisdiction of his appeal from the circuit court for the district of Massachusetts, and the petitioner prays that his claim of appeal may be allowed, he having deposited with the clerk of the circuit court two hundred dollars as security upon his appeal to this court, and having now deposited with said clerk one hundred dollars additional thereto, all of which he consents may be held as security upon the appeal to the Supreme Court which he now claims.

Respectfully submitted—

By JAMES HUNTINGTON.

A true copy.
Attest: JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit.

JAMES HUNTINGTON, Appellant,
v.
WILLIAM A. SAUNDERS. } No. 142.

Assignment of Errors.

(Presented in court and filed February 15, 1896.)

The said petitioner respectfully represents that the court erred in dismissing said appeal for the reasons assigned as follows, viz:

1. Because the court had jurisdiction of the said appeal and the subject-matter thereof.

2. Because the law creating said court of appeals gave to said court jurisdiction of such causes as this and the court should have exercised the same and considered the errors assigned in the record of the appeal from the circuit court, each and every one of which errors is now assigned.

Respectfully submitted by—

JAMES HUNTINGTON, *Petitioner.*

A true copy.
Attest:
[SEAL.] JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1895.

JAMES HUNTINGTON, Petitioner for Revision, Appellant,
v.
WILLIAM A. SAUNDERS, Bankrupt, Appellee. } No. 142.

Order of Court.

February 15, 1896.

The appeal of James Huntington, presented in open court and filed February 15, 1896, is allowed.

By the court:

JOHN G. STETSON, *Clerk.*

A true copy.

Attest:

[SEAL.] JOHN G. STETSON, *Clerk.*

Certificate of Clerk of United States Circuit Court of Appeals for the First Circuit.

I, John G. Stetson, clerk of the United States circuit court of appeals for the first circuit, certify that the foregoing pages, numbers 1 to 95, inclusive, contain and are true and attested copies of the record and all proceedings in the cause entitled James Huntington, petitioner for revision, appellant, *vs.* William A. Saunders, bankrupt, appellee, No. 143, in said United States circuit court of appeals for the first circuit determined.

I further certify that annexed hereto is the original citation upon the appeal in said cause to the Supreme Court of the United States, with the return of service thereof.

In testimony whereof I hereunto set my hand and affix the seal of said United States circuit court of appeals, at Boston, in the first judicial circuit, this eleventh day of March, A. D. 1896.

[SEAL.] JOHN G. STETSON, *Clerk.*

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to William A. Saunders, of Cambridge, in the district of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, on the twelfth day of March next, pursuant to an appeal duly obtained from a decree of the United States circuit court of appeals for the first circuit, in a case entitled James Huntington, petitioner for revision, appellant, *v.* William A. Saunders, bankrupt, appellee, upon which appeal the said James Huntington is appellant and

you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Le Baron B. Colt, judge of the circuit court of the United States for the district of Massachusetts and judge of the United States circuit court of appeals for the first circuit and presiding in the above-named cause, at Boston, in said first judicial circuit, this eighteenth day of February, A. D. 1896.

LE BARON B. COLT,
Circuit Judge.

UNITED STATES OF AMERICA, *District of Massachusetts*, } ss:

BOSTON, *February* 20, 1896.

I hereby certify that on the twentieth day of February, 1896, I served the within citation by leaving a true and attested copy of said citation at the last and usual place of abode of the within-named William A. Saunders, of Cambridge.

F. X. MACDONALD,
United States Marshal.

Fees.

Service	2 00
Copy	1 00
Tr	30
	3 30

Office Supreme Court U. S.
FILED
APR 11 1896
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

No. 928.

JAMES HUNTINGTON, PETITIONER FOR REVISION,
APPELLANT,

v.

WILLIAM A. SAUNDERS, BANKRUPT,
APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION OF WILLIAM A. SAUNDERS TO DISMISS THE APPEAL, AND HIS BRIEF IN SUPPORT OF THE MOTION.

WILLIAM B. DURANT,
of Counsel for WILLIAM A. SAUNDERS, Appellee.

Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 928.

JAMES HUNTINGTON, PETITIONER FOR REVISION,
APPELLANT,

v.

WILLIAM A. SAUNDERS, BANKRUPT,
APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION TO DISMISS THE APPEAL.

And now William A. Saunders, named as appellee in said cause, by William B. Durant, his counsel, moves this Honorable Court to dismiss the appeal in the above-entitled cause; and for grounds and in support of the motion he avers and shows as follows: —

1. No appeal has been or could lawfully be taken from the decree of the Circuit Court of Appeals for the first circuit, for the reason that that court had no jurisdiction of the appeal of James Huntington, named as appellant in this cause, from the Circuit Court for the district of Massachusetts, inasmuch as the decree of the Circuit Court for

the district of Massachusetts, dated January 16, 1895, dismissing the petition of James Huntington, petitioner for revision of a decree of the District Court dismissing the petitioner's specifications and granting the bankrupt's discharge, was final, and no appeal therefrom could be had to any court whatever.

2. This court has no jurisdiction of this appeal, and such want of jurisdiction is apparent upon the face of the record.

WILLIAM B. DURANT,
of Counsel for William A. Saunders, *Appellee*.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 928.

JAMES HUNTINGTON, PETITIONER FOR REVISION,
APPELLANT,

v.

WILLIAM A. SAUNDERS, BANKRUPT,
APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR WILLIAM A. SAUNDERS, IN SUPPORT OF HIS MOTION TO DISMISS THE APPEAL.

This is a motion to dismiss an attempted appeal from a decree of the Circuit Court of Appeals for the first circuit, entered on February 3, 1896, upon which the above-entitled case was docketed in this court on March 12, 1896.

The decree of the Circuit Court of Appeals entered February 3, 1896, from which the appeal purports to be taken, dismissed, for want of jurisdiction, an appeal taken by James Huntington from a decree of the Circuit Court for the district of Massachusetts, entered January 16, 1895, dismissing, on hearing, a petition of said James Huntington,

addressed to the court last named for revision of a decree of the District Court, entered December 23, 1893, dismissing certain specifications filed by him against the discharge of said William A. Saunders, a bankrupt, and a decree of said District Court entered December 30, 1893, granting the bankrupt a discharge.

The petition for revision was filed under the provisions of the bankrupt act to be found in section 4986 of the Revised Statutes of the United States, which gave the Circuit Court for each district a general superintendence and jurisdiction of all cases and questions arising in the District Court for such district when sitting as a court of bankruptcy.

The entire record has been printed, except certain testimony taken by said James Huntington, under the sixty-seventh rule of the Supreme Court of the United States in equity, as amended, on certain days, beginning May 5, 1894, and ending July 20, 1894, which is omitted as not material to the questions arising upon this motion. The testimony is referred to in the opinion of Mr. Justice PUTNAM, judge of the Circuit Court, which will be found on page 15 of the record as printed for the submission of this motion. There were no exceptions taken in the District Court or allowed by the district judge, nor was there any report made of the evidence taken before him, and no such bill of exceptions or report appears in the complete record of this case.

In support of the motion to dismiss, it is respectfully submitted:

I.

The Circuit Court of Appeals had no jurisdiction of the appeal from the Circuit Court, for the following reasons:

The act of Congress of June 7, 1878 (taking effect September 7, 1878), c. 160, acts of Congress of 1878, 20 St. p. 99, repealing the bankrupt act, provided that such repeal should in no manner invalidate or affect any case in bankruptcy instituted and pending in any court prior to the day when the act should take effect, but, as to all such pending cases, and all future proceedings therein, and in respect of all rights of debtors and creditors, the acts thereby repealed should continue in full force and effect until the same should be fully disposed of, in the same manner as if said acts had not been repealed. Consequently it would be a strained construction of the act creating the Court of Appeals to say that Congress intended thereby to repeal any part of the repealing act of 1878, which provided that pending causes in bankruptcy should be "disposed of in the same manner as if the bankrupt acts had not been repealed." Furthermore, it would be an unnatural construction of the act creating the Court of Appeals to hold that Congress intended thereby to make any provision for bankrupt cases pending under acts repealed in 1878. The act, moreover, should not be construed retroactively, unless its provisions clearly and distinctly indicate that it was intended to have that effect.

Section 6, chapter 517, of the act of March 3, 1891, which, the appellant contends, covers his case, provides that "the Circuit Court of Appeals established by this act shall exercise appellate jurisdiction to review, by appeal or by writ of error, final decisions in the district courts and the existing circuit courts, in all cases other than those

provided for in the preceding section of this act, *unless otherwise provided by law*."

It is submitted that it was "otherwise provided by law" in the act of 1878 before cited, and therefore the section does not apply.

The appellant cannot well contend that his proceeding in the Circuit Court was "by appeal or by writ of error," for, if his proceeding in that court was an appeal or writ of error, or even could have been made such, it appears that section 4 of the Circuit Court of Appeals act of March 3, 1891, c. 517, 26 St. p. 826, provides "That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts." Therefore, if the jurisdiction which the Circuit Court exercised was appellate jurisdiction, and the Circuit Court of Appeals act applies to this case, which the appellant is obliged to contend, his application to the Circuit Court was forbidden by the very act under which he claims that his appeal now lies. If, however, his application to the Circuit Court was addressed to its supervisory powers over the proceeding of the District Court, vested in it by the acts of Congress relating to bankruptcy, as it was in fact, the Circuit Court had final jurisdiction, and no appeal could be had from its exercise of such jurisdiction to any court, as is shown by numerous decisions of this court.

Morgan v. *Thornhill*, 11 Wall. 65.
Hall v. *Allen*, 12 Wall. 452.
Mead v. *Thompson*, 15 Wall. 635.
Coit v. *Robinson*, 19 Wall. 274.

Nelson v. *Carland*, 1 How. 265.
Wiswall v. *Campbell*, 93 U.S. 347.

The doctrine of *Wiswall* v. *Campbell*, and cases there cited, that this court will not review the action of the circuit courts in the exercise of their supervisory jurisdiction under the bankrupt law, and the reasoning of that case, is not in any way affected by any language that can be found in the act of March 3, 1891.

The bankrupt acts make a sharp and clear distinction between appellate jurisdiction and supervisory jurisdiction, and the sections above quoted from the act of March 3, 1891, relate wholly to appellate jurisdiction and writs of error.

Rev. St., secs. 4980, 4986.
Coit v. *Robinson*, *ante*.

II.

The appellee further submits that this court has no jurisdiction of the appeal taken or attempted to be taken to it:

First, because the Circuit Court of Appeals had no jurisdiction, as heretofore shown, and therefore this court cannot exercise appellate jurisdiction.

Second, because this court, before the act of March 3, 1891, had no jurisdiction of an appeal from the Circuit Court in cases of this nature (*Wiswall* v. *Campbell*, 93 U.S. 347); and, independently of the repealing act of 1878, before cited, and the exception in the act of March 3, 1891, "unless otherwise provided by law," it was not the intention of Congress, in creating the Court of Appeals, to bestow upon that court an appellate jurisdiction which this

court did not itself possess, especially an appellate jurisdiction over the few cases in bankruptcy then remaining undisposed of.

"The primary object of the act of March 3, 1891, c. 517, as stated in *American Construction Company* v. *Jacksonville Railway Company*, 148 U.S. 372, 382, 'well known as a matter of public history, manifest on the face of the act, and judicially declared in the leading cases under it, was to relieve this court of the overburden of cases and controversies arising from the rapid growth of the country and the steady increase of litigation; and, for the accomplishment of this object, to transfer a large part of its appellate jurisdiction to the Circuit Court of Appeals thereby established in each judicial circuit, and to distribute between this court and those, according to the scheme of the act, the entire appellate jurisdiction from the circuit and district courts of the United States.'"

United States v. *American Bell Tel. Co.*, 159 U.S. 551.

Third. If this court has any jurisdiction of this appeal, it derives it from the following clause of section 6 of the act of March 3, 1891:

"In all cases not hereinbefore in this section made final, there shall be of right an appeal, or writ of error, or review of the case, by the Supreme Court of the United States, where the matter in controversy shall exceed one thousand dollars besides costs."

But the words "all cases not hereinbefore in this section made final," plainly mean only cases of which the Court of Appeals has itself jurisdiction. It might perhaps also be questioned whether there is a "matter in controversy exceeding one thousand dollars." Nothing was in con-

troversy in the District Court except the dismissal of the specifications and the granting of the discharge. The proof of the claim was not in controversy, nor the amount of it. This point was considered, although not decided, by Mr. Justice MILLER in —

Ruddick v. *Billings*, 1 Woolw. (C.C. Rep.) 331.

It is respectfully submitted that the present motion to dismiss should be granted by the court.

WILLIAM B. DURANT,
of Counsel.

FILED.
APR 23 1896
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

No. 928.

JAMES HUNTINGTON, Appellant,

v.

WILLIAM A. SAUNDERS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FIRST CIRCUIT.

BRIEF FOR APPELLANT IN OPPOSITION TO MOTION TO DISMISS.

BANCROFT GHERARDI DAVIS,
of Counsel for Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 928.

JAMES HUNTINGTON, Appellant,

v.

WILLIAM A. SAUNDERS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FIRST CIRCUIT.

BRIEF FOR APPELLANT IN OPPOSITION TO MOTION TO DISMISS.

Statement of Facts.

On the 1st day of October, 1875, the appellee Saunders was adjudicated a bankrupt on a petition filed in the United States District Court for the district of Massachusetts. The appellant was a creditor of the bankrupt, and duly proved claims against him for more than $5000. The bankrupt petitioned the District Court for his discharge; and on May 14, 1877, the appellant objected to the bankrupt's discharge, and filed specifications of objections to the

discharge, which on February 28, 1878, were referred to the Register. December 22, 1893, the bankrupt filed a petition in the District Court that objections to his discharge might be dismissed or heard at an early day, and on the 23d of December, 1893, the objections to the discharge were dismissed by the District Court for want of prosecution. Thereupon, December 27, 1893, the appellant filed a new petition in the District Court that the bankrupt's discharge be refused, which was denied by the court December 30, 1893; and on the same day the District Court granted the bankrupt's discharge.

On the 3d of January, 1894, the appellant filed a petition in the Circuit Court to review the dismissal of objections and the granting of the bankrupt's discharge by the District Court. On the 16th of January, 1895, the petition for revision was dismissed with costs by the Circuit Court.

July 11, 1895, the appellant claimed an appeal from the order or decree of the Circuit Court dismissing his petition for revision, to the Circuit Court of Appeals, which was duly allowed by the circuit judge July 26, 1895.

January 30, 1896, the Circuit Court of Appeals dismissed the appellant's appeal for want of jurisdiction, and the appellant then appealed to this court. The appellee has moved to dismiss this appeal for want of jurisdiction.

Conceding that, under the laws as they stood prior to the enactment of the Circuit Court of Appeals act (Act of 1891, March 3, 26 St. 826, c. 517; 1 Supp. Rev. St. p. 901), there was no appeal to the Supreme Court from a decree of the Circuit Court exercising the supervisory jurisdiction conferred upon it by the 2d section of the bankruptcy act of 1867 (Rev. St. § 4986), our contention is (1) that the Circuit Court of Appeals act in terms gave the right of appeal from such a decree to the Circuit Court of Ap-

peals; and (2) further provided an appeal from the Circuit Court of Appeals to the Supreme Court in such cases.

I.

The Circuit Court of Appeals act is broad enough to give the right of appeal to the Circuit Court of Appeals from the decree or order of the Circuit Court dismissing a petition for revision of the proceedings of the District Court, brought under Rev. St. sec. 4986.

The language of section 6 of the Circuit of Appeals act, on which we rely to establish our right of appeal from the Circuit Court to the Circuit Court of Appeals, is as follows: —

"That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review, by appeal or by writ of error, final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law."

We shall bring our appeal from the Circuit Court to the Circuit Court of Appeals within the terms of the act of 1891, if we can establish the following propositions: —

(A) That the decree or order of the Circuit Court from which Mr. Huntington appealed to the Circuit Court of Appeals was "final decision in the . . . existing circuit courts."

(B) That it was a case "other than those provided for in the preceding section of this act."

(C) That it does not come within the exception "unless otherwise provided by law."

A case "other than those provided for in the preceding section of this act."

1. For convenience we beg to consider the foregoing propositions in a slightly different order, and to deal first with the second proposition, viz., that it was a case "other than those provided for in the preceding section of this act." The cases provided for in the preceding section of this act (section 5) are those in which appeals or writs of error may be taken from district or existing circuit courts direct to the Supreme Court of the United States, and an inspection of section 5 of the Circuit Court of Appeals act makes it so obvious that this case is not included in the cases therein enumerated that we do not regard it as necessary to consider this proposition further than to refer to the act itself.

The case, therefore, is not among the class of exceptions to the right of appeal to the Circuit Court of Appeals, designated in the act as "those provided for in the preceding section."

This appeal not within the exception "unless otherwise provided by law."

2. We beg next to consider the proposition that this case does not come within the exception "unless otherwise provided by law."

This proposition raises somewhat more difficulty. If we understand the decision of the Circuit Court of Appeals dismissing our appeal in this case, it was founded upon the proposition that it did come within the exception "unless otherwise provided by law." We are none the less confident, however, that this is an erroneous construction of that phrase, and that our present contention is correct.

The Circuit Court of Appeals said, in its decision dismissing Mr. Huntington's appeal for want of jurisdiction (Extracts from Transcript of Record, p. 18), —

"In the act repealing the bankruptcy law, it is provided that the law shall continue in force until all proceedings thereunder 'shall be fully disposed of, in the same manner as if said act had not been repealed.' 20 Stat. 99, chap. 160. Under the provisions of the act thus continued in force there was no appeal from the decree of the Circuit Court under the supervisory power vested in that court. *Wiswall* v. *Campbell*, 93 U.S. 347. This case, therefore, falls within the exception in the clause giving jurisdiction to this court ['unless otherwise provided by law'], and it follows that the appeal must be dismissed."

That is to say, the Circuit Court of Appeals dismissed Mr. Huntington's appeal from the Circuit Court, because it was "otherwise provided" *by a law passed* PRIOR *to the Circuit Court of Appeals act.*

This court has decided, however, in the case of *Lau Ow Bew* v. *United States*, 144 U.S. 47, that the phrase "unless otherwise provided by law" refers not to *prior* laws, but to *contemporaneous* or *subsequent* acts. The language of the court at pages 56, 57, is as follows: —

"By section 14 [of the Circuit Court of Appeals act] . . . 'all acts and parts of acts relating to appeals or writs of error, inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act were repealed.' . . . The appellate jurisdiction not vested in this court was thus vested in the court created by the act [the Circuit Court of Appeals], and the entire jurisdiction distributed. *McLish* v. *Roff*, 141 U.S. 661, 666.

"The words 'unless otherwise provided by law' were manifestly inserted out of abundant caution, in order that any qualification of the jurisdiction by *contemporaneous* or

subsequent acts should not be construed as taking it away except when expressly so provided.

"Implied repeals [of the Circuit Court of Appeals act] were intended to be thereby guarded against. To hold that the words referred to *prior* laws would defeat the purpose of the act, and be inconsistent with its context and its repealing clause."

Lau Ow Bew's Case has been repeatedly cited with approval by this court since it was decided, and its authority is unquestioned.

See *American Construction Co.* v. *Jacksonville Railway*, 148 U.S. 372, 382, 383.

These cases establish conclusively that the reasoning of the Circuit Court of Appeals in dismissing Mr. Huntington's appeal cannot be sustained. They show not only that his appeal is not properly to be included within the exception in the act of 1891, "unless otherwise provided by law," but also that both the national bankruptcy act, and the act of 1878 repealing the national bankruptcy act, must give way to and must be considered repealed or amended by the Circuit Court of Appeals act, so far as they provide or fail to provide for appeals, in any manner inconsistent with the provisions of the Circuit Court of Appeals act. If, therefore, as we shall show later (*post*, pp. 12 *et seq.*), the affirmative part of section 6 of the act of 1891, describing what appeals may be taken to the Circuit Court of Appeals, is *prima facie* broad enough to include this appeal, the effect of that section is not cut down or modified by anything in the repealing act of 1878, 20 St. 99, c. 160.

The Circuit Court of Appeals act, as stated in *McLish* v. *Roff*, 141 U.S. 661, and in *Lau Ow Bew's Case*, "provides for the distribution of the *entire* appellate jurisdiction

of our national judicial system between the Supreme Court of the United States and the Circuit Court of Appeals therein established." (141 U.S., at page 666.) In pursuance of this purpose, Congress not only provided in the fourteenth section of the Circuit Court of Appeals act for the repeal of all acts and parts of acts relating to appeals and writs of error inconsistent with the provisions of the Circuit Court of Appeals act, but it also expressly provided in section 4 that "no appeal by writ of error or otherwise shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts."

We submit that the above citation from *McLish* v. *Roff* sufficiently establishes the proposition that, wherever the appellate jurisdiction may have been lodged prior to the passage of the Circuit Court of Appeals act, and under whatsoever circumstances appeals may have been granted or refused prior to that act, we must, since the passage of that act, look to the language of the act itself (disregarding prior legislation) to determine whether in a given case an appeal will lie.

We beg to suggest further that any argument which the appellee may offer by which the repealing act of 1878 is made (by keeping alive the old bankruptcy procedure) to cut down the affirmative grant of the right to appeal in section 6 of the act of 1891, proves too much. If, notwithstanding the act of 1891, appeals in bankruptcy matters are to be taken as if that act had never been passed, it would follow that appeals might still be taken, under Rev. St. § 4980, from the district court to the circuit court. It is expressly provided, however, by section 4 of the act of 1891 that "no appeal, whether by writ of error or other-

wise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts."

We are not aware that the effect of the Circuit Court of Appeals act on the *appellate* jurisdiction granted by Rev. St. § 4980, has ever been expressly adjudicated. We do not doubt, however, that, if the question were presented, it must inevitably be decided that it had been ousted. The reasoning of the court in the case of *In re Briggs*, 20 U.S. App. 574, which decides that the *supervisory* jurisdiction of the circuit court granted by Rev. St. § 4986, was not ousted by section 4 of the act of 1891, tends rather to sustain than to disprove the soundness of our contention in this respect. We do not question the authority of that case. The ground of the decision was that the jurisdiction granted by Rev. St. § 4986 was not *appellate*, and therefore was not ousted by section 4 of the act of 1891. The argument is that section 4 took away *appellate* jurisdiction only, leaving *supervisory* jurisdiction still vested in the circuit courts. It is significant, however, in view of the contention of the appellee in the case at bar, viz., that the repealing act of 1878 prevents the act of 1891 from applying to the case at bar, to note that, in *In re Briggs*, the court places no reliance whatsoever upon the act of 1878, 20 St. 99, c. 160, as preventing the act of 1891 from applying to that case. The effect of *In re Briggs*, so far as the present case is concerned, is merely this: It decides that, notwithstanding the passage of the act of 1891, the Circuit Court still retained its jurisdiction of Mr. Huntington's petition for review under its supervisory jurisdiction granted by Rev. St. § 4986. It does not decide expressly that the appellate jurisdiction in bankruptcy matters

has or has not been shifted by the act of 1891; but the *ratio decidendi* of the case leads to the inference that the court were of opinion that the *appellate* jurisdiction *had* been shifted. The jurisdiction of the Circuit Court to entertain the petition for review in the case at bar was supervisory; but the jurisdiction of the Circuit Court of Appeals to entertain Mr. Huntington's appeal from the decree of the Circuit Court dismissing his petition for review was appellate. The former jurisdiction is not affected by the act of 1891, while the latter jurisdiction is dependent upon and determined by the wording of that act.

We submit, therefore, that we have established the proposition that Mr. Huntington's appeal to Circuit Court of Appeals was not within the exception in section 6 of the act of 1891, "unless otherwise provided by law;" and further, that, so far as appeals in bankruptcy matters are concerned, both the national bankruptcy act and the repealing act of 1878 must give way to the act of 1891.

JUDGE PUTNAM'S DECREE OR ORDER DISMISSING THE PETITION FOR REVIEW WAS "FINAL DECISION IN THE EXISTING CIRCUIT COURTS."

3. We shall next consider the proposition that Judge PUTNAM's decree was "final decision . . . in the existing circuit courts," and therefore is included by the affirmative words in section 6 of the act of 1891 granting appeals to the circuit courts of appeals.

Section 6 of the act of 1891 is unambiguous, and may not be corrected by judicial construction.

(*a*) Before considering in detail the language of the act, we beg to point out a few preliminary principles of

law by which the interpretation of the statute must be governed.

It is well established that, —

"when the meaning of a statute is clear, and its provisions are susceptible of but one interpretation, that sense must be accepted as the law; its consequences, if evil, can only be avoided by a change of the law itself, to be effected by the legislature and not by judicial construction."

Sutherland, Stat. Const. § 238.
Sturges v. *Crowninshield*, 4 Wheat. 202.

We submit, therefore, that, if the language of the act (the words used being read in their ordinary sense) gives us the right of appeal, that right must be allowed us until taken away by Congress.

The act of 1891 is not perfect. Some parts of the act have already been severely criticised by the courts.

United States v. *Sutton*, 47 Fed. Rep. 129.
Folsom v. *United States*, 160 U.S. 121.

In *Folsom* v. *United States*, 160 U.S. 121, deciding that circuit courts of appeals have no jurisdiction over the judgments of territorial courts in capital cases and in cases of infamous crimes, and that this construction of the act of 1891 was not affected by the fact that convictions for minor offences are reviewable on a second appeal, while convictions for capital and infamous crimes are not so reviewable, this court said, at page 127, —

"It is said that this involves the absurdity that convictions for minor offences are reviewable on a second appeal, while convictions for capital and infamous crimes are not.

Doubtless, in some cases where the language of a statute leads to an absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it modifying the meaning of the words, so as to carry out the real intention; *but where the intention is plain it is the duty of the court to expound the statute as it stands.* As far as Congress went in conferring this right to a second appeal, the intention is clear and the language used unambiguous. The objection really is that Congress should have gone farther, and given by this act a second review in this court in cases of convictions of capital and infamous crimes in the territories.

"*It may be that it was an oversight in that particular; but if it were, we certainly cannot supply it by construing the fifteenth section as carrying appellate jurisdiction.*" . . .

Our contention in the present case is that Congress has expressed itself in plain, intelligible terms in this statute, the meaning of which is unambiguous, and that, as stated above, the duty of the court is merely to expound the statute as it stands, without attempting to correct any oversight that Congress may have made.

There is no necessity for going beyond the words themselves to seek the intention of Congress. The question at present to be considered merely is whether Judge PUTNAM's decree or order was "final decision," within the meaning of those words as ordinarily used.

If the intention of Congress were open to consideration or argument, apart from the intention as expressed in the words employed, taking those words in their ordinary meaning, we should not find it difficult to agree with the contention of the appellee before the Circuit Court of Appeals that Congress probably did not have bankruptcy cases in mind at all when it passed the act of 1891. Perhaps if the attention of Congress had been called to the possibility of bankruptcy appeals to this court, it would

either have excluded the possibility of taking such appeals to the Circuit Court of Appeals or would have classed them with patent, revenue, admiralty, and other cases in which the judgments, decrees, and decisions of the circuit courts of appeals are made final. It is a sufficient reply to this suggestion, however, that no such provision has been made for bankruptcy cases, either by name, or, as we contend, by any fair construction of the language used by Congress in the act. Since the language used is not ambiguous, this court is neither called on nor permitted to inquire whether the omission of Congress was through oversight or design.

Act of 1891 *applies to appeals to be taken in future in cases pending at passage of act.*

(*b*) It is hardly necessary to point out that the act was intended to cover appeals to be taken in the future in cases already pending at the time of the passage of the act.

> See joint resolution of March 3, 1891, 26 St. 1115, saving jurisdiction in a limited class of cases.
> Sutherland, Stat. Const. § 482.

The decree of Putnam, J., was final decision in the existing circuit courts within section 6 *of the act of* 1891.

(*c*) The real question, therefore, is whether the order or decree of PUTNAM, J., dismissing Mr. Huntington's petition in the Circuit Court is "final decision . . . in the existing circuit courts," within the ordinary meaning of those words.

To repeat here, for the convenience of the court, the first clause of section 6: it is as follows: —

"Section 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review, by appeal or by writ of error, final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law."

We are, of course, aware that we shall be met with the decisions of —

Wiswall v. *Campbell*, 93 U.S. 348;
Morgan v. *Thornhill*, 11 Wall. 65;
Coit v. *Robinson*, 19 Wall. 274, —

to the effect that, under the laws as they existed at the time the appeals in those cases were taken, no appeal lay direct to the Supreme Court from a decree or order of the circuit court made in the exercise of its supervisory jurisdiction under the bankruptcy laws. We do not question the authority of those cases, but submit that the language of the statute under which we claim the right to appeal is so different from the language of the acts then existing that those cases do not determine the case at bar. (See *infra*, p. 17.)

"In all cases" not equivalent to "in all actions at law and suits in equity."

Proceeding to a careful examination of section 6 of the act of 1891, we submit that the part of the section with which we are now dealing is to be read as we have put it above, viz., "final decision in the . . . existing circuit courts." The phrase "in all cases" which follows the word "courts" does not limit the word "decision" to decision in anything technically called a "case" in the sense of

an action at law or suit in equity only, or in any sense which would exclude the controversy in the circuit court.

We submit that the most natural reading of the phrase "in all cases," as used in section 6 of the act of 1891, shows that it is not used in its more restricted law meaning, but that it is used in its primary and more comprehensive meaning; and that the phrase as used is equivalent to "under all circumstances," "in all contingencies," or "wherever."

In re Bogart, 2 Sawyer, 396, 404.

In support of this contention we beg to suggest, first, that the use of the preposition "in" instead of the preposition "of" in the phrase "in all cases," and the order of the words "final decision in . . . the existing circuit courts in all cases other than," etc., make the interpretation we suggest the only natural interpretation that can be put upon the language used.

If Congress had intended to limit the right of appeal to appeals from final decision of "cases" in the circuit courts (as distinguished from final decision of controversies which are not *cases*), the natural way to express such a limitation would have been by changing the order of the words and substituting "of" for "in," so that the phrase should read "final decision *of* all cases in the circuit court other than those," etc.

And second, we submit that an examination of sections 5 and 6, in which the word "cases" occurs a number of times, shows conclusively that it must be given a broad and comprehensive meaning, and that it is not there used in a narrow, restricted, or technical sense which would include actions at law and suits in equity only, or which would ex-

clude from the meaning of the word itself any contested question in a court of justice.

For example:

"Appeals . . . may be taken from . . . the existing circuit courts direct to the Supreme Court in the following cases: —

. . . . . .

"From the final sentences and decrees in prize causes.

"In cases of conviction of a capital or otherwise infamous crime." . . .

Here we have two phrases which are used to describe a "case." Obviously, neither "final sentences and decrees in prize causes" nor "conviction of a capital or otherwise infamous crime" aptly or accurately describes or is included within "case" in the sense of "action at law or suit in equity;" but, on the other hand, they do describe a "contingency."

It is significant, also, that, in the phrase "From the final sentences and decrees in prize *causes*," Congress has used the word "*causes*" instead of "*cases*" to express the more precise, narrow, and accurate meaning.

But we submit, further, that, even if it be assumed that "final decision in the . . . circuit courts in all cases other than," etc., is to be read as if it were "final decision of all cases in the circuit courts," and that "cases" is used, not in its primary meaning, but in its more restricted law meaning, it is nevertheless broad enough to include the controversy between these parties in the Circuit Court. "Case," as used even in its law meaning, is a broad and comprehensive term.

Century Dictionary, "Case:"

"5. In *law:* (*a*) A cause or suit in court; any instance of litigation. . . . In this sense *case* is nearly synonymous with *cause*, which is the more technical term. *Case* includes special proceedings as well as actions at law, suits in equity, and criminal prosecutions; and it implies not only a controversy, but also legal proceedings."

American and English Encyclopædia of Law, "Case:"

"A contested question in a court of justice."

In construing the phrase "for relief on the grounds of fraud in *cases* heretofore solely cognizable in a court of chancery," the Supreme Court of Iowa said, in *Gebhard* v. *Sattler*, 40 Iowa, 152, 156, —

"The word 'case' here means a contested question in a court of justice. *Bouvier's Dict.* It does not refer to the action, or the form thereof, or the character it may assume on account of the form in which it is prosecuted, but to the questions and rights involved."

"A case is defined to be a question contested before a court of justice."

Ex parte Towles, 48 Tex. 433.

In *Osborn* v. *United States Bank*, 9 Wheat. 738, 819, Mr. Chief Justice MARSHALL says, referring to the third article of the Constitution ("The judicial power shall extend to all cases in law and equity arising under this Constitution," etc.), —

"This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, when any *question* respecting

them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a *case*." . . .

See also Miller, The Constitution of the United States, pp. 314 *et seq.*

We submit that the foregoing authorities establish conclusively that, even though the word "cases" may be held to have been used in section 6 in its law meaning, it is nevertheless a term broad enough to include the controversy in the Circuit Court between the appellant and the appellee, which is certainly to be regarded as a "contested question in a court of justice," if not a suit; and further, that, however the word "cases" is used in section 6, whether in its primary or in its law meaning, the effect of the phrase "in all cases" is not to cut down or narrow the meaning of the words "final decision" to final decision of *suits* or *actions*, as distinguished from final decision of *questions*.

Appeals are granted by the act of 1891 *from "final decision;" whereas by the earlier judiciary acts they were granted from "final judgments and decrees" "in civil actions."*

We desire next to call attention to the contrast between the wording of the act under which we claim our right to appeal to the Circuit Court of Appeals, viz., "final decision in . . . the existing circuit courts," and the language of the prior acts under which *Wiswall* v. *Campbell*, *Morgan* v. *Thornhill*, and *Coit* v. *Robinson* were decided.

The writ of error in *Wiswall* v. *Campbell* was claimed under Rev. St. § 691, providing for writ of error from "all final judgments of any circuit court . . . in civil actions," etc.

The appeals in *Coit* v. *Robinson* and *Morgan* v. *Thornhill* were claimed under section 22 of the judiciary act of 1789, "final judgments and decrees in civil actions and suits in equity in a circuit court," and the act of March, 1803, providing for appeal from "all final judgments or decrees rendered in any circuit court in any cases of equity," etc.

Coit v. *Robinson*, 19 Wall., at page 276.

It is thus seen that, while the earlier acts provide for appeals from "*final judgments or decrees*" "*in civil actions*," the act of 1891 grants the right of appeal from "*final decisions*" rendered in the existing circuit courts, without prescribing further, so far as this case is concerned, in express language, what kind of controversies must be "finally decided" in order that an appeal will lie to the Circuit Court of Appeals. We respectfully submit that this difference in wording is most significant, and is conclusive in our favor of the question raised on the appellee's motion to dismiss.

Word "decision" broader than "judgment" or "decree," and includes the determination of "questions."

The word "decision" is broader than the word "judgment" or the word "decree." It includes the "determination of *questions*," as well as judgments and decrees. It is defined in Webster's International Dictionary as "determination, as of a question or doubt; settlement; conclusion."

In construing a statute under which appeal was allowed from "all decisions" of a board of commissioners, the court said, in *Hanna* v. *Board of Comm'rs*, 29 Ind. 173, —

"For the purpose of authorizing an appeal, the word 'decisions' will be applied to every ruling, final in its nature, upon any subject upon which the board of county commissioners are not authorized to take legislative action."

Wiswall v. *Campbell*, *Coit* v. *Robinson*, *and Morgan* v. *Thornhill*, *not decisive of case at bar.*

If we examine the decisions in the cases denying the right of appeal from decrees made in the exercise of the supervisory power, the significance of this difference in wording of the statutes will become apparent.

A careful examination of the opinion in *Morgan* v. *Thornhill*, which is cited as the leading authority for the proposition that no appeal lay direct to this court from a decree of the circuit court, exercising its supervisory jurisdiction under the bankruptcy act, as the statutes then stood, will show that the *ratio decidendi* was that the supervisory jurisdiction included the examination and decision of *questions*, while appeal lay to this court from *decrees* only.

See 11 Wall., at pages 80, 81.

In the case of *Coit* v. *Robinson*, 19 Wall., at page 283, which is the next case in which the reason for the rule of *Morgan* v. *Thornhill* is at all discussed, the court again dwells on the fact that, under the supervisory power of the circuit courts in bankruptcy cases, the jurisdiction "extends to mere questions as contradistinguished from judgments or decrees." The court then goes on to decide that, under the judiciary act as it then stood (1873), there was

no appeal from an order or decree of the Circuit Court in the exercise of its supervisory power, because —

"Mere *questions* are not re-examinable under the regulations prescribed in those acts [the judiciary act and an act allowing appeals in equity and admiralty cases], nor would any judgment or decree be regarded as a regular final judgment or decree for such a purpose unless it was rendered in term time when the court was in session."

Coit v. *Robinson*, 19 Wall. 283.

It is to be noted that there was a dissenting opinion in *Coit* v. *Robinson*, in which two members of the court join. The order or decree there appealed from was an order or decree of the Circuit Court affirming a decree of the District Court granting a bankrupt his discharge. The minority dissent on the ground that "the decree appealed from in this case has all the elements of a final decree." (19 Wall., at page 286.)

Again, in *Wiswall* v. *Campbell*, 93 U.S., at page 348, the ground for denying a writ of error under the statutory provisions then existing is stated to be:

"As our jurisdiction extends only to a re-examination of *final judgments or decrees in suits at law or in equity*, it follows that we have no control over judgments and orders made by the courts below in mere bankruptcy proceedings."

We respectfully submit that, since the passage of the act of 1891, the reasoning of these cases is no longer applicable to the case at bar.

Assuming that the decision of the Circuit Court in the case at bar was the decision of a *question*, it nevertheless was "final *decision* . . . in the existing circuit courts," and

so comes within the 6th section of the act of 1891. It is not necessary to-day that there should be a final *decree* in the circuit court in order that an appeal therefrom may be taken to the circuit courts of appeals.

We submit, therefore, that we have established our first proposition, viz., that the act of 1891 gave the right of appeal from the decree of the Circuit Court to the Circuit Court of Appeals, by showing that Judge PUTNAM's decree was "final decision," and was not within any of the exceptions or limitations put upon the right to appeal in section 6 of the act of 1891.

Our argument does not apply to mere interlocutory orders or decrees.

In anticipation of objections that may be made to our argument, we beg to insist that it falls far short of establishing generally the right to appeal to the circuit courts of appeals from mere interlocutory decrees of the circuit court, in classes of cases other than those enumerated in section 5 of the act of 1891. The decree in question (the decree of Judge PUTNAM in the Circuit Court) differs from a mere interlocutory decree.

"The cases in which appeals in bankruptcy cases have heretofore been disallowed were cases of interlocutory orders or decrees, and therefore not within the terms of the law. The decree appealed from in this case has all the elements of a final decree, and belongs to a system of proceeding which has always been regarded in England as of equitable cognizance."

Mr. Justice BRADLEY, in *Coit* v. *Robinson*, 19 Wall. 286.

We repeat that the right of appeal from decrees of the circuit court in the exercise of its supervisory jurisdiction has been denied in *Morgan* v. *Thornhill* and *Coit* v. *Robinson*, not upon the ground that such decrees were mere interlocutory decrees, but upon the ground that the supervisory jurisdiction included the decision of *questions*, and that under the earlier judiciary acts the appellate court had jurisdiction of appeals from final judgments and decrees in actions at law and suits in equity only, and had no jurisdiction of appeals from the decisions of questions. In the citation above quoted, Mr. Justice BRADLEY, while not denying that the decree appealed from may have been the decision of a *question*, distinguishes it from a mere interlocutory decree or order.

The ordinary interlocutory decree or order is rendered by the court in which the main cause is pending. (2 Daniel's Chancery Pl. & Pr. (6th Am. ed.) pp. 1575, 1576.) The decrees from which appeal was claimed in *Morgan* v. *Thornhill* and *Coit* v. *Robinson*, and the decree of Judge PUTNAM in the case at bar, however, were rendered upon petitions filed in a court other than that in which the main cause was pending.

We submit, therefore, that these decrees may properly be called "final decision" [of a question], but that they do not answer the description of mere interlocutory orders or decrees. And therefore the argument which we make may extend the right of appeal from the circuit court to the circuit courts of appeals, so as to include appeals from the decision of *questions*, without including generally interlocutory orders and decrees.

We may add that we believe that the result of adopting our construction of the statute would not be to increase

materially the appeals to this court. Obviously but few bankruptcy "questions" can now come before the court; while the provision of section 6 of the act of 1891, making the judgments and decrees of the circuit courts of appeals final in "all cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty cases," would effectually protect this court from the consideration of any considerable number of appeals from the final decision of *questions*.

II.

An appeal lies from the Circuit Court of Appeals to the United States Supreme Court if the Circuit Court of Appeals had jurisdiction of the appellant's appeal from the Circuit Court.

Having, as we submit, established our first contention, that the Circuit Court of Appeals act gave the right to appeal from the Circuit Court to the Circuit Court of Appeals, it remains only to show that the appellant has the right to appeal from the Circuit Court of Appeals to the Supreme Court. The provision for appeals from the circuit courts of appeals to the Supreme Court of the United States is found in section 6 of the act of March 3, 1891, in the following language: —

"In all cases not hereinbefore in this section made final there shall be of right an appeal, or writ of error, or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs."

(*a*) The cases made final and in which there is no appeal to the Supreme Court are (1) cases in which the juris-

diction is dependent entirely upon the citizenship of the parties; (2) cases under the patent laws; (3) under the revenue laws; (4) under the criminal laws; (5) admiralty cases. The present case therefore is not among those specifically made final in the Circuit Court of Appeals, and an appeal to the Supreme Court cannot be denied on that ground.

(*b*) The matter in controversy exceeds one thousand dollars besides costs.

This sufficiently appears from the stipulation filed in the case (Extracts from Record, p. 19).

The stipulation referred to shows that the appellant is a creditor of the appellee to an amount which exceeds $5000 exclusive of interest or costs, all of which will be forever lost to him if the appellee shall be finally discharged, but which he may hereafter collect if his objections to the bankrupt's discharge prevail. We submit that this sufficiently shows a controversy about matters exceeding one thousand dollars besides costs. We can only add that, in the earlier cases, such as *Coit* v. *Robinson*, 19 Wall. 274, it has been assumed, rather than decided, both by the court and by counsel, that such a state of affairs disclosed that the jurisdictional amount was involved, without reference to the probable chance of satisfying the creditor's claims out of any of the bankrupt's property.

We submit, therefore, that if this case was ever properly brought to the Circuit Court of Appeals it comes within the terms of the statute prescribing what cases may be appealed from the Circuit Court of Appeals to the Supreme Court; it is not included in the cases which may not go beyond the Circuit Court of Appeals; the jurisdictional amount is involved.

Summary.

In conclusion, we submit that the act of 1891 in terms gave the right of appeal to the Circuit Court of Appeals from the decree of Judge PUTNAM in the Circuit Court dismissing Mr. Huntington's petition for revision, because (1) Judge PUTNAM's decree was final decision in the Circuit Court (or was final decision in a "case" in the Circuit Court, "case" being used in a sense broad enough to include all litigated questions), and "final decision" includes the determination of *questions;* (2) and this was a case "other than those provided for in the preceding section of this act;" (3) and this appeal was not within the exception "unless otherwise provided by law," and was not affected by the act of 1878 repealing the national bankruptcy act.

And we submit, further, that the act of 1891 gave the right to appeal to the Supreme Court from the decree of the Circuit Court of Appeals, because (1) it was not a case in which the decision of the Circuit Court of Appeals was made final; and (2) the jurisdictional amount was involved.

Wherefore we submit that the appellee's motion to dismiss should be denied.

BANCROFT GHERARDI DAVIS,
of Counsel for JAMES HUNTINGTON, *Appellant.*